

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-467-BO

JUSTIN J. WHITE,)
Plaintiff,)
v.)
PETER WHITE, in his official and)
individual capacities; *et al.*,)
Defendants.)


ORDER

This cause comes before the Court on a motion for attorney fees and costs filed by defendants Vance County and Vance County Sheriff's Office. Plaintiff has responded in opposition, the moving defendants have replied, and the matter is ripe for ruling.

On December 17, 2021, plaintiff noticed an appeal of this Court's judgment entered following its order granting defendants' motion for summary judgment. [DE 87]. If an appeal of the merits of an action is taken and a motion for attorney fees is pending, a district court may rule on the motion for attorney fees, defer its ruling, or deny the motion without prejudice and direct that it be refiled after resolution of the appeal. Fed. R. Civ. P. 54(d) advisory committee's note (1993 amendment); *see also Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004). A district court may prefer to defer consideration of a motion for attorney fees until the appeal has been resolved where the fee claim either involves substantial issues or is likely to be affected by the court of appeals' decision. *Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2015 WL 3466842, at *2 (E.D. Va. June 1, 2015) (citing Fed. R. Civ. P. 58 advisory committee's notes (1993 amendments)).

The Court in its discretion DENIES the motion for attorney fees [DE 89] WITHOUT PREJUDICE to refiling at the conclusion of the appeal. If appropriate, the moving defendants may refile their motion within fourteen (14) days of the entry of the mandate of the court of appeals and may incorporate their previously filed motion by reference.

SO ORDERED, this 7 day of February, 2022.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE